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HONORABLE EDWARD F. SHEA

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEP 29 2005

JAMES R. LARSEN, CLERK
RICHLAND, WASHINGTON DEPUTY

7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9
10 NAM LUU-VAN, a married man,) NO. CV-04-492-EFS
11 Plaintiff,) STIPULATED PROTECTIVE
12 vs.) ORDER
13 RUSS HAMILTON, a married man)
14 and his marital community; TOR)
15 HARTMANN, a married man and his)
16 marital community; DEAN)
17 MARTINEZ, a married man and his)
18 marital community; SOLAR GRADE)
19 SILICON, LLC, a Washington limited)
20 liability company,)
21 Defendants.)
22)
23)
24)
25)
26)

21 The parties to this action, Plaintiff Nam Luu-Van ("Plaintiff"), and Defendants Russ
22 Hamilton, Tor Hartmann, Dean Martinez, and Solar Grade Silicon, LLC.,
23 ("Defendants"), through their respective counsel, hereby stipulate to entry of this
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25
26 STIPULATED PROTECTIVE ORDER - 1

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1 mutual protective order regarding the use and confidentiality of documents,
2 testimony, information and material produced in this litigation.
3

4 To expedite the flow of discovery, facilitate the prompt resolution of disputes over
5 confidentiality, protect adequately material entitled to be kept confidential, and
6 ensure that protection is afforded only to material so entitled, it is, pursuant to the
7 Court's authority under FRCP 26(c), and with the consent of the parties to this
8 litigation, ORDERED:

10 1. Confidential Information.

11 "CONFIDENTIAL" documents and information shall include: (1) Plaintiff's
12 medical and mental health records, tax and financial records; (2) Defendants'
13 records which they may reasonably believe to contain confidential information,
14 including but not limited to, personnel files, payroll records, complaints,
15 investigative reports, studies, business operations, and other trade secret
16 information. In addition, the parties to this litigation may designate as
17 "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" any document,
18 testimony, information or material disclosed through formal or informal discovery
19 or otherwise in the course of this litigation as hereinafter set forth in Paragraphs a, b,
20 and c. Such designation shall subject the information produced or provided under
21 said designation to the provisions of this Confidentiality Agreement. All or any
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26 STIPULATED PROTECTIVE ORDER - 2

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1 portion of any documents, transcripts, writings or recordings of any sort which
2 substantially quote or paraphrase information regarding the Confidential document,
3 testimony, information or material shall also be deemed Confidential and subject to
4 the terms and condition of this Protective Order. The parties shall act in good faith
5 and on a reasonable basis when designating material "CONFIDENTIAL: SUBJECT
6 TO PROTECTIVE ORDER."

8 (a) Any writing produced by any party or person in this litigation
9 may be designated as "CONFIDENTIAL: SUBJECT TO
10 PROTECTIVE ORDER" by any of the parties to this litigation by
11 stamping the word "CONFIDENTIAL: SUBJECT TO PROTECTIVE
12 ORDER" on the face of the writing. Alternatively, a party may
13 designate any writing as "CONFIDENTIAL: SUBJECT TO
14 PROTECTIVE ORDER" by identifying such document(s) by bates
15 number and designating it/them as "CONFIDENTIAL: SUBJECT TO
16 PROTECTIVE ORDER" in a cover letter addressed to the opposing
17 party(s)' counsel and accompanying the production of such
18 document(s).

22 (b) Any party to this litigation may designate deposition testimony
23 or any portion of deposition testimony as "CONFIDENTIAL:
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26 STIPULATED PROTECTIVE ORDER - 3

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SUBJECT TO PROTECTIVE ORDER" by advising the reporter and counsel of such designation during the course of the deposition or at any time thereafter. Portions of any deposition designated "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" are to be filed with the Court under seal, bearing substantially the following designation: "Portions of this deposition were taken subject to a Confidentiality Agreement. These portions shall remain sealed until further agreement of the parties." Whenever any writing designated as "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" is identified as an exhibit in connection with testimony given in this case, it shall be so marked and separately filed under seal with the Court.

(c) Any party to this litigation may designate specific responses to information requests, including requests for production responses and interrogatory answers, confidential by labeling the specific response "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER."

2. Filing Under Seal.

Whenever any writing, testimony, information or material designated as "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" is used or submitted to the Court in conjunction with any filing or proceeding in this litigation, it shall be so

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marked and shall be filed separately under seal with the Court. Where possible, only Confidential portions of filings with the Court shall be filed under seal.

3. Access to Confidential Information.

Except upon prior written consent of the party asserting "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" treatment or upon further order of a court of competent jurisdiction, documents, testimony, information or material designated as "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" shall be held in strict confidence and shall be used solely for the purposes of prosecution or defense of this litigation. Access to "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" documents, testimony, information or material shall be limited to:

- (a) the Court, including any Court personnel assisting the Court, stenographers or other persons involved in taking or transcribing Court or deposition testimony in this action, and members of the jury;
- (b) Plaintiff, Defendants and their counsel of record and paralegal, clerical and secretarial employees of counsel of record;
- (c) the officers, directors or employees of a party participating in the prosecution, defense, settlement or other disposition of this action;

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1 (d) mediators, consultants, experts or litigation support services,
2 including outside copying services, retained by a party for the
3 purpose of assisting that party in this action provided such
4 persons agree in writing to abide and be bound by the terms of
5 this Order in the form attached hereto as Exhibit A;

6 (e) potential witnesses provided such persons agree in writing to
7 abide and be bound by the terms of this Order in the form
8 attached hereto as Exhibit A;

9 (f) any person who is an author, addressee, or recipient of, or who
10 previously had access to, the Confidential Information;

11 (g) deposition witnesses who agree in writing to abide by and be
12 bound by the terms of this Order in the form attached hereto as
13 Exhibit A;

14 (h) any other person as to whom the party that designated the
15 document or information as Confidential has consented to
16 disclosure in advance; and

17 (i) any other person designated by the Court.

22 4. Inadvertent or Late Disclosure.

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26 STIPULATED PROTECTIVE ORDER - 6

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1 If any party inadvertently produces or initially discloses any Confidential
2 Information without marking it with the appropriate legend, that party may give
3 notice to the receiving party that the information should be treated in accordance
4 with the terms of this Order, and shall forward appropriately stamped copies of
5 the items in question. Within five (5) days of the receipt of substitute copies, and
6 upon request, the receiving party shall return the previously unmarked items and
7 all copies thereof. The inadvertent disclosure shall not be deemed a waiver of
8 confidentiality.
9

11 5. Copy and Storage of Confidential Information and Material.

12 No party shall, for itself or for any person or persons acting on its behalf, make
13 more copies of any "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER"
14 information or material than are reasonably necessary to conduct this litigation.
15 Except as otherwise provided for in this Confidentiality Agreement, all
16 "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" information and
17 material shall remain in possession of counsel for the respective parties or the
18 parties themselves, and be stored in a secure place.
19

21 6. Challenges to Confidential Designations.

22 If any party disagrees as to the confidentiality status of any discovery, that party
23 will advise the producing counsel of such disagreement in writing. The burden
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26 STIPULATED PROTECTIVE ORDER - 7

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1 of proving any discovery "CONFIDENTIAL: SUBJECT TO PROTECTIVE
2 ORDER" is upon the party designating the information as "CONFIDENTIAL:
3 SUBJECT TO PROTECTIVE ORDER." Upon written notification by counsel
4 that a specific document or discovery previously designated as
5 "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" should not be
6 granted a "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" status,
7 the party producing and designating the document or discovery as
8 "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" shall apply for a
9 protective order within fifteen (15) days from receipt of said notification. The
10 producing party's failure to apply for a protective order within fifteen (15) days
11 will render the discovery non-confidential.

12 7. Use of Confidential Information and Material.

13 Should any party hereto seek to utilize any "CONFIDENTIAL: SUBJECT TO
14 PROTECTIVE ORDER" document, testimony, information or material at trial or
15 a hearing in this matter, that party shall meet with counsel for the other parties in
16 an effort to agree upon a procedure to insure the confidentiality of such
17 document, testimony, information or material. In the event counsel are unable to
18 reach agreement, the matter will be submitted to the Court.

19 8. Procedures Upon Termination of Action.

20 21 22 23 24 25 26 STIPULATED PROTECTIVE ORDER - 8

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1 Within thirty (30) business days following any final settlement or the running of
2 any applicable time to appeal the final order entered in this litigation, all parties
3 shall either (i) return to the person who produced such materials all copies of all
4 Confidential information obtained through discovery in this action or (ii) certify
5 to that person that all such materials have been destroyed, except that counsel for
6 each party may retain in its files one copy of each pleading, brief or document
7 filed with the Court, and deposition and trial transcripts and exhibits thereto, and
8 correspondence, subject to the provisions of this Order 7. Copies of
9 "CONFIDENTIAL: SUBJECT TO PROTECTIVE ORDER" documents that
10 have been filed with the Court may be returned to the filing party by the Clerk of
11 the Court, or destroyed.
12
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15 9. Efforts by Non-Parties to Obtain Confidential Information.

16 If any Party has obtained Confidential Information under the terms of this
17 Order and receives a subpoena or other compulsory process commanding the
18 production of such Confidential Information, such Party shall promptly notify the
19 producing party or non-party. The subpoenaed party shall not produce any
20 Confidential Information in response to the subpoena without the prior written
21 consent of the producing party or non-party unless in response to an order of a court
22 of competent jurisdiction. The parties will not object to the producing party or non-
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26 STIPULATED PROTECTIVE ORDER - 9

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1 party having a reasonable opportunity to appear in the litigation or process
2 commanding disclosure of such Confidential Information for the sole purpose of
3 seeking to prevent or restrict disclosure thereof.
4

5 **10. Effect of Order.**

6 This Order shall not affect the right of any party or non-party to oppose
7 production of Discovery Materials on any ground permitted by the Washington
8 Civil Rules, including any applicable privilege. Moreover, this Order shall not
9 affect the scope of discovery by any party that is not otherwise proper under the
10 Washington Civil Rules.
11

12 **11. Application to Court.**

13 This Order is without prejudice to the right of any interested party to apply to the
14 Court for an order permitting the disclosure of any Confidential information or to
15 apply for an order modifying or limiting this Stipulation and Protective Order in
16 any respect.
17

18 **12. Continuing Jurisdiction.**

19 All provisions of this Protective Order shall continue to be binding after the
20 conclusion of this action unless subsequently modified by agreement between the
21 parties or order of the Court and the Court shall retain jurisdiction of this matter
22 for the purpose of enforcing this Protective Order.
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26 STIPULATED PROTECTIVE ORDER - 10

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1 SO ORDERED:
2

3 DATED this 29 day of September, 2005.
4

5 BY THE COURT:
6

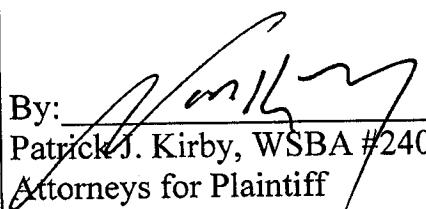
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8 HONORABLE EDWARD F. SHEA
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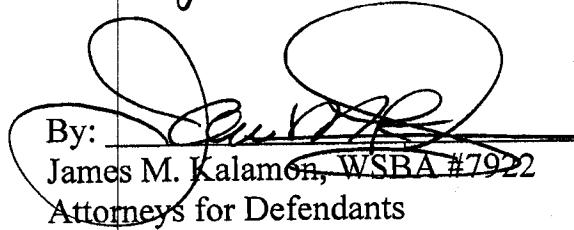
10 DUNN & BLACK, P.S.
11

12 PAINE, HAMBLEN, COFFIN, BROOKE &
13 MILLER LLP
14

15 Dated: Sept 19, 2005
16

17 Dated: Sept 21, 2005
18

19 By: 
20 Patrick J. Kirby, WSBA #24097
21 Attorneys for Plaintiff
22

23 By: 
24 James M. Kalamon, WSBA #7922
25 Attorneys for Defendants
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EXHIBIT A

CONSENT TO PROTECTIVE ORDER

1. I, _____, have read the foregoing Stipulated Protective Order dated _____, 2005 (the "Protective Order"), and agree to be bound by its terms with respect to any documents, material or information designated or marked "Confidential: Subject to Protective Order" that are furnished to me as set forth in the Protective Order.

2. I further agree (i) not to disclose to anyone any documents, material or information marked "Confidential: Subject to Protective Order" other than as set forth in the Protective Order; and (ii) not to make any copies of any documents, materials or information marked "Confidential: Subject to Protective Order" furnished to me except for use in accordance with Protective Order; and (iii) not to use any documents or information produced or provided to me in connection with this litigation for any purposes other than those prosecuting and/or defending this action as set forth in paragraph 8 of the Protective Order.

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Dunn & Black
A Professional Service Corp.

Peyton Building
10 North Post, Suite 200
Spokane, WA 99201
VOICE: (509) 455-8711 • FAX: (509) 455-8734

3. I hereby consent to the jurisdiction of the United States District Court, Eastern District of Washington, with regard to any proceedings to enforce the terms of the Protective Order.

Signature

Date

STIPULATED PROTECTIVE ORDER - 13

Dunn & Black
A Professional Service Corp.

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